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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION**

**HILDA L. SOLIS, Secretary of Labor,  
United States Department of Labor,**

**Plaintiff,**

**vs.**

**BEST MIRACLE CORPORATION,  
THUY THI LE, and TOAN VAN  
NGUYEN,**

**Defendants.**

**Case No.: SACV 08-00998-CJC(MLGx)**

**MEMORANDUM OF DECISION**

1 **I. INTRODUCTION**

2

3 Plaintiff Hilda L. Solis, United States Secretary of Labor (the “Secretary”), brought  
4 this action against Defendants Best Miracle Corporation (“Best Miracle”), Thuy Thi Le,  
5 and Toan Van Nguyen (collectively “Defendants”) for violations of the Fair Labor  
6 Standards Act (“FLSA”) at their garment shop in Santa Ana, California. After  
7 considering all the evidence presented by the parties at a seven-day bench trial, the Court  
8 finds that Defendants brazenly disregarded the FLSA by exploiting low-wage garment  
9 workers and requiring them to work long hours without proper compensation. Congress  
10 enacted the FLSA in 1938 to protect workers from such sweatshop practices. The Court  
11 now enjoins Defendants from withholding \$172,832.50 in unpaid backwages and from  
12 further violating the FLSA.

13

14 **II. BACKGROUND**

15

16 Ms. Le opened Best Miracle in the summer of 2005.<sup>1</sup> It was not her first foray into  
17 the garment industry. Soon after Ms. Le immigrated to the United States from Vietnam  
18 in 1992, she began working as a seamstress.<sup>2</sup> Beginning in 1999, Ms. Le owned or  
19 operated a number of garment shops in Southern California under different names,  
20 including a company called Double T, which closed in 2005.<sup>3</sup> In order to obtain a  
21 business license for her garment shops, Ms. Le took classes where she learned the  
22 requirements of federal and state labor laws, including the recordkeeping and overtime  
23 provisions of the FLSA.<sup>4</sup> Although Ms. Le’s sister owned Double T, Ms. Le played a  
24 significant managerial role at the company, advising her sister on business matters and

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26 <sup>1</sup> Le, 2/24/10, 66:13-17. Citations to the trial transcript are referenced by the last name of the witness,  
27 date of testimony, and transcript page and line.

<sup>2</sup> Le, 2/24/10, 69:12-70:19.

<sup>3</sup> Le, 2/24/10, 70:23-76:7; Leung, 2/19/10 (Vol. II), 34:13-35:7; Shen, 2/25/10, 70:8-73:9.

<sup>4</sup> Le, 2/24/10, 83:20-85:7.

1 training and supervising employees.<sup>5</sup> Mr. Nguyen, Ms. Le's husband, also worked for  
2 Double T as a supervisor.<sup>6</sup> In 2005, the Department of Labor investigated Double T for  
3 wage and hour violations. During that investigation, Ms. Le admitted that she operated  
4 Double T and had violated the FLSA by failing to pay her employees overtime.<sup>7</sup>

5  
6 At Best Miracle, Ms. Le and Mr. Nguyen employed workers to trim, assemble,  
7 sew, and iron clothing for local garment manufacturers, who would, in turn, ship the  
8 clothing to retailers. Best Miracle's employees were of Latino and Asian descent, and  
9 many of them did not speak English. They worked long hours for little pay, routinely  
10 clocking over 60 hours per week. On weekdays, employees would generally arrive at the  
11 Best Miracle shop at 6:00 a.m. and leave at 6:00 p.m., taking a half-hour lunch break in  
12 the middle of the day. Best Miracle employees also generally worked from 6:00 a.m. to  
13 2:00 p.m. on Saturdays and on occasional Sunday mornings.<sup>8</sup>

14  
15 Ms. Le apparently did not learn a lesson on how to treat workers from her  
16 experience at Double T. With the help of Mr. Nguyen, Ms. Le devised a system of  
17 falsifying records at Best Miracle in order to avoid paying overtime to employees. They  
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21 <sup>5</sup> Le, 2/24/10, 73:16-75:11; Leung, 2/19/10 (Vol. II), 28:17-34:3. Both the Secretary's and Defendants'  
22 employee witnesses testified that Ms. Le was their boss or manager at Double T. Baez, 2/16/10, 69:21-  
23 70:6; Matias, 2/17/10, 15:10-21; Rios, 2/17/10, 82:6-9; Montoya, 2/18/10, 14:3-5; Fuentes, 2/18/10,  
87:21-24; De La Rosa, 2/24/10, 24:5-22; Gonzalez Mendoza, 2/24/10, 59:3-11.

24 <sup>6</sup> Gonzalez Mendoza, 2/24/10, 59:12-15.

25 <sup>7</sup> Leung, 2/19/10 (Vol. II), 28:17-35:7; Le, 2/24/10, 76:14-22; Ex. 158.

26 <sup>8</sup> Baez, 2/16/10, 56:2-23, 57:19-58:6; Resendiz, 2/16/10, 146:1-147:5; Matias, 2/17/10, 6:12-8:16;  
Juarez Benitez, 2/17/10, 55:2-56:3; Rios, 2/17/10, 78:13-79:4; Alvarez, 2/17/10, 119:4-21; Montoya,  
2/18/10, 4:25-5:21; Rangel, 2/18/10, 75:5-20; Fuentes, 2/18/10, 81:14-82:2. Mr. Alvarez also testified  
27 that he worked from 6:00 a.m. to 6:00 p.m. for the first two or three months of his employment, but then  
worked 7:00 a.m. to 5:30 p.m. for the remainder of the six months he worked at Best Miracle. Alvarez,  
2/17/10, 119:6-21, 124:7-9, 131:14-132:3. Two employees also testified that work tapered off during  
28 the last few months Best Miracle was open. Matias, 2/17/10, 7:9-14; Montoya, 2/18/10, 35:5-14, 52:23-  
53:13, 72:25-73:2.

1 paid some employees by the hour and others by the piece.<sup>9</sup> All of the employees,  
2 however, used timecards.<sup>10</sup> Ms. Le and Mr. Nguyen instructed some employees not to  
3 punch over 40 hours a week on their timecards. These employees would punch in hours  
4 after they arrived in the morning and punch out hours before they left in the evening.<sup>11</sup>  
5 Ms. Le and Mr. Nguyen instructed other employees to keep a “real” timecard showing all  
6 of their hours and a “fake” timecard showing only 40 hours per week.<sup>12</sup> Sometimes Ms.  
7 Le and Mr. Nguyen would require employees to sign blank timecards that they would  
8 later fill in with fake hours.<sup>13</sup> Other times Ms. Le and Mr. Nguyen would require the  
9 employees to sign timecards they had already filled in with fake hours.<sup>14</sup> To keep up the  
10 illusion of a legitimate operation, Ms. Le and Mr. Nguyen paid employees the amount on  
11 the 40-or-less timecards by check. The remainder of hours they paid by cash at a straight  
12 rate.<sup>15</sup> Ms. Le and Mr. Nguyen thus had timecards that matched the payroll in case of an  
13 inspection by the Department of Labor. To further conceal their wrongdoing, Ms. Le and  
14 Mr. Nguyen occasionally recorded small amounts of overtime on the fraudulent  
15 timecards.<sup>16</sup>

16  
17 Mr. Nguyen played a significant role in the operation of Best Miracle. He filled  
18 out the time and wage sheet, determined employee schedules, signed paychecks, and paid  
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20 <sup>9</sup> Paid by the piece: Resendiz, 2/16/10, 147:6-7; Matias, 2/17/10, 8:17-18; Alvarez, 2/17/10, 119:22-23;  
21 Montoya, 5:22-23. Paid by the hour: Juarez Benitez, 2/17/10, 56:4-5; Rangel, 2/18/10, 78:12-13. Both:  
Baez, 2/16/10, 61:11-16.

22 <sup>10</sup> Baez, 2/16/10, 62:25-63:6; Resendiz, 147:12-150:9; Matias, 2/17/10, 12:8-10; Juarez Benitez,  
2/17/10, 56:11-13; Rios, 2/17/10, 79:24-25; Alvarez, 2/17/10, 120:2-5; Montoya, 2/18/10, 5:25-6:2;  
23 Rangel, 2/18/10, 75:21-25; Fuentes, 2/18/10, 83:18-23.

24 <sup>11</sup> Matias, 2/17/10, 8:19-9:21, 24:22-26:25, 33:3-34:10; Rios, 2/17/10, 80:18-81:4.

25 <sup>12</sup> Baez, 2/16/10, 64:15-66:25; Juarez Benitez, 2/17/10, 56:8- 58:18; Alvarez, 2/17/10, 120:6-122:21;  
Montoya, 2/18/10, 11:8-13:24, 41:1-43:16; Fuentes, 2/18/10, 84:3-85:13.

26 <sup>13</sup> Baez, 2/16/10, 64:15-66:25; Juarez Benitez, 2/17/10, 69:13-14.

27 <sup>14</sup> Baez, 2/16/10, 64:15-66:25; Resendiz, 147:12-150:9; Juarez Benitez, 2/17/10, 56:8-58:18; Alvarez,  
2/17/10, 120:6-122:21; Montoya, 2/18/10, 11:8-13:24, 41:1-43:16; Fuentes, 2/18/10, 84:3-85:13.

28 <sup>15</sup> Baez, 2/16/10, 64:15-66:25; Resendiz, 147:12-150:9; Matias, 2/17/10, 8:19-13:2; Juarez Benitez,  
2/17/10, 56:8- 58:18; Rios, 2/17/10, 79:9-81:22; Alvarez, 2/17/10, 120:6-122:21; Montoya, 2/18/10,  
11:8-13:24; Rangel, 2/18/10, 76:24-77:4; Fuentes, 2/18/10, 84:3-86:25.

<sup>16</sup> Exs. 2, 6, 17, 20, 24, 26, 35, 36, 37.

1 all the bills.<sup>17</sup> Mr. Nguyen also helped Ms. Le falsify records. He prepared employees'  
2 second set of false timecards and asked employees to sign them.<sup>18</sup> In addition to the  
3 timeclock on the wall of the shop, Mr. Nguyen kept a second timeclock in his office that  
4 he used to create fraudulent timecards.<sup>19</sup> He also explained the check and cash payment  
5 system to employees and distributed cash pay.<sup>20</sup>

6

7 Ms. Le and Mr. Nguyen did not hide their reasons for doctoring timecards from the  
8 employees. On various occasions, they admitted to the employees that they were altering  
9 the timecards to fool the Department of Labor and avoid paying taxes.<sup>21</sup> Not  
10 surprisingly, Ms. Le used fear and bribes to prevent her employees from reporting Best  
11 Miracle to the authorities. She would insult or scream at employees when she became  
12 angry.<sup>22</sup> On one occasion, Juan Carlos Montoya called in sick to work because of a  
13 toothache. Ms. Le fired him for calling in sick. When Mr. Montoya asked to be paid for  
14 the work he had done in that pay period, Ms. Le took his notebook and threw it at him.  
15 Mr. Nguyen let Mr. Montoya have his job back after Mr. Montoya threatened to call the  
16 Department of Labor.<sup>23</sup> On another occasion, Ms. Le began to suspect that an employee  
17 had filed a complaint with the Department of Labor. In her efforts to discover the  
18 identity of the complainant, Ms. Le searched through Lilia Baez's personal belongings  
19 and demanded to see her cellphone call log. She tried bribing Ms. Baez with money.  
20 After informing the employees that she would not give them work if they did not help  
21 her, Ms. Le fired Ms. Baez for refusing to expose the complainant.<sup>24</sup> Worst of all, Ms. Le

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<sup>17</sup> Nguyen, 2/25/10, 66:12-16, 62:18-24; Fuentes, 2/18/10, 82:17-23.

<sup>18</sup> Resendiz, 2/16/10, 147:12-150:9; Baez, 2/16/10, 106:20-22; Alvarez, 2/17/10, 120:19-22.

<sup>19</sup> Alvarez, 2/17/10, 160:2-162:13; Montoya, 2/18/10, 41:1-43:16.

<sup>20</sup> Resendiz, 2/16/10, 148:8-12.

<sup>21</sup> Baez, 2/16/10, 78:15-79:10; Matias, 2/17/10, 29:4-16; Alvarez, 2/17/10, 121:8-22, 142:22-145:4.

<sup>22</sup> Alvarez, 2/17/10, 128:17-129:3; 142:15-21.

<sup>23</sup> Montoya, 2/18/10, 14:12-15:5.

<sup>24</sup> Baez, 2/16/10, 85:1-86:6.

1 threatened to report any employees who cooperated with the Department of Labor to the  
2 immigration authorities.<sup>25</sup>

3

4 In the summer of 2007, the Department of Labor began investigating Best Miracle  
5 for suspected wage and hour violations. Investigator John Leung conducted undercover  
6 surveillance on the Best Miracle shop for seven days in July 2007. He recorded the  
7 model, make, color, and license plate number of the vehicles parked at the Best Miracle  
8 shop. He also recorded arrivals by foot and by bicycle. On weekdays, Mr. Leung  
9 observed the shop open with cars in the parking lot and 30 to 40 employees working from  
10 6:00 a.m. to 6:00 p.m. He also found that the shop was open on the two Saturdays that he  
11 conducted surveillance.<sup>26</sup>

12

13 Mr. Leung and his colleagues at the Department of Labor conducted an on-site  
14 inspection of Best Miracle on July 30, 2007. They found that the majority of the  
15 employees were working off the clock. Specifically, the inspectors observed 31  
16 employees at their work stations, six in the break room, and 10 outside the shop having  
17 lunch.<sup>27</sup> Although there were 47 employees at the shop, the inspectors found that only 15  
18 timecards were punched in for that day.<sup>28</sup> Ms. Le did not answer when the inspectors  
19 asked her where the remaining timecards were.<sup>29</sup> Two days later, Mr. Leung informed  
20 Best Miracle's clients that the Department of Labor had determined that Best Miracle's  
21 garments were produced in violation of the FLSA and that the Department objected to  
22 shipment of the garments.<sup>30</sup> Despite receiving this notice, one of Best Miracle's clients,

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26<sup>25</sup> Baez, 2/16/10, 70:17-75:21.

27<sup>26</sup> Leung, 2/19/10 (Vol. I), 81:20-84:2.

28<sup>27</sup> Pham, 2/16/10, 18:20-19:18; Leung, 2/19/10 (Vol. I), 85:9-21; Exs. 125-1, 125-2.

29<sup>28</sup> Pham, 2/16/10, 22:5-22; Leung, 2/19/10 (Vol. I), 86:17-25; Ex. 125-2.

30<sup>29</sup> Pham, 2/16/10, 26:21-27:12.

<sup>30</sup> Leung, 2/19/10 (Vol. II), 15:14-16:6.

1 Moa Moa, shipped the goods anyway after Ms. Le called and said the garments had been  
2 produced legally.<sup>31</sup> Best Miracle closed down shortly after the on-site inspection.<sup>32</sup>

3

4 On September 5, 2008, the Secretary filed this action against Best Miracle, Ms. Le,  
5 and Mr. Nguyen, seeking to enjoin them from future violations of the FLSA and from  
6 withholding unpaid backwages. The Court conducted a bench trial from February 16,  
7 2010, to February 25, 2010.<sup>33</sup> This memorandum sets forth the Court's findings of fact  
8 and conclusions of law.

9

10 **III. DEFENDANTS VIOLATED THE FLSA**

11

12 Congress enacted the FLSA to protect the “minimum standard of living necessary  
13 for health, efficiency, and general well-being of workers.” 29 U.S.C. § 202(a). The  
14 FLSA requires employers to keep accurate records and pay employees a minimum hourly  
15 wage and overtime pay. *Id.* §§ 201-219. It also prohibits distribution of “hot goods,”  
16 which are goods produced in violation of the Act. *Id.* § 215(a)(1). The Secretary has  
17 shown that the Best Miracle employees are covered by the Act and that Defendants  
18 violated the recordkeeping, overtime, and hot goods provisions of the FLSA.

19

20 **A. Coverage**

21

22 The FLSA protects employees who are employed by an enterprise engaged in  
23 interstate commerce or the production of goods for interstate commerce. 29 U.S.C. §§  
24 206(a), 207(a). Employers of such employees are jointly and severally liable for

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<sup>31</sup> Chung 2/19/10 (Vol. I), 14:25-15:23; Leung, 2/19/10 (Vol. II), 15:4-19:18.

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<sup>32</sup> Le, 2/24/10, 115:13-24.

28

<sup>33</sup> Defendants had no right to a jury trial under the Seventh Amendment because the Secretary sought  
only injunctive relief. *McLaughlin v. Owens Plastering Co.*, 841 F.2d 299, 300 (9th Cir. 1988);  
*Paradise Valley Investigation & Patrol Servs. v. U. S. Dist. Court*, 521 F.2d 1342, 1343 (9th Cir. 1975).

1 violations of the FLSA. *Boucher v. Shaw*, 572 F.3d 1087, 1094 (9th Cir. 2009). Under  
2 the FLSA, an “employer” includes any person “acting directly or indirectly in the interest  
3 of an employer in relation to an employee . . . .” 29 U.S.C. § 203(d). “Where an  
4 individual exercises control over the nature and structure of the employment relationship,  
5 or economic control over the relationship, that individual is an employer within the  
6 meaning of the Act.” *Lambert v. Ackerley*, 180 F.3d 997, 1012 (9th Cir. 1999) (internal  
7 quotations and citations omitted). The Ninth Circuit uses a four-factor “economic  
8 reality” test to determine whether an individual is an employer for the purposes of the  
9 FLSA: “whether the alleged employer (1) had the power to hire and fire the employees,  
10 (2) supervised and controlled employee work schedules or conditions of employment, (3)  
11 determined the rate and method of payment, and (4) maintained employment records.”  
12 *Gilbreath v. Cutter Biological, Inc.*, 931 F.2d 1320, 1324 (9th Cir. 1991).

13  
14 Best Miracle and Ms. Le have admitted that they are employers covered by the  
15 FLSA.<sup>34</sup> In his closing brief, Mr. Nguyen did not dispute that he is an employer. In any  
16 case, Mr. Nguyen is an employer under the FLSA because his actions satisfy three of the  
17 four factors of the “economic reality” test. First, Mr. Nguyen had the authority to hire  
18 and fire Best Miracle employees. Mr. Montoya testified that when Ms. Le fired him for  
19 calling in sick to work, Mr. Nguyen let him keep his job.<sup>35</sup> Second, Mr. Nguyen  
20 supervised and controlled employee work schedules. For example, Mr. Nguyen gave  
21 Oscar Fuentes permission to start work at 7:00 a.m. when the other workers started at  
22 6:00 a.m.<sup>36</sup> Mr. Nguyen also told employees to punch in for less than eight hours per  
23 day.<sup>37</sup> Third, Mr. Nguyen maintained employment records for Best Miracle employees.  
24 He prepared fraudulent timecards and asked employees to sign them.<sup>38</sup> Mr. Nguyen also

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26<sup>34</sup> Ex. 175, Nos. 7, 8, and 12.

27<sup>35</sup> Montoya, 2/18/10, 14:15-15:12.

28<sup>36</sup> Fuentes, 2/18/10, 82:17-23.

<sup>37</sup> Matias, 2/17/10, 9:3-12.

<sup>38</sup> Alvarez, 2/17/10, 120:19-22; Resendiz, 2/16/10, 148:2-12.

1 testified that he filled out the time and wage sheet, signed paychecks, and paid all the  
2 bills at Best Miracle.<sup>39</sup> These factors taken together show that Mr. Nguyen is an  
3 employer under the FLSA because he exercised significant economic control over Best  
4 Miracle employees.

5

6 **B. Overtime**

7

8 Under Section 7 of the FLSA, “no employer shall employ any of his employees . . .  
9 for a workweek longer than forty hours unless such employee receives compensation for  
10 his employment in excess of the hours above specified at a rate not less than one and one-  
11 half times the regular rate at which he is employed.” 29 U.S.C. § 207. When an  
12 employer fails to maintain accurate payroll records,<sup>40</sup> the Secretary carries her burden  
13 under the FLSA if she shows that the employees performed work for which they were  
14 improperly compensated and produces some evidence to show the amount and extent of  
15 that work “as a matter of just and reasonable inference.” *McLaughlin v. Ho Fat Seto*, 850  
16 F.2d 586, 589 (9th Cir. 1988); *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680, 687  
17 (1946), superseded by statute on other grounds as stated in *Carter v. Panama Canal Co.*,  
18 463 F.2d 1289, 1293 (D.C. Cir. 1972). “The burden then shifts to the employer to come  
19 forward with evidence of the precise amount of work performed or with evidence to  
20 negative the reasonableness of the inference to be drawn from the [Secretary’s]  
21 evidence.” *Mt. Clemens Pottery*, 328 U.S at 687-88.

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25 <sup>39</sup> Nguyen, 2/25/10, 66:12-16, 62:18-24.

26 <sup>40</sup> Section 11(c) of the FLSA requires an employer to “make, keep, and preserve such records of the  
27 persons employed by him and of the wages, hours, and other conditions and practices of employment  
28 maintained by him . . . .” 29 U.S.C. § 211(c). Specifically, employers must keep accurate records of 1)  
the total daily and weekly hours employees work, 2) employees’ regular hourly rates of pay for each  
week that overtime is worked, 3) the total daily or weekly straight time earnings, and 4) the total weekly  
premium pay for overtime hours. 29 C.F.R. §§ 516.2, 516.5.

1       The Ninth Circuit had held that this standard “allows district courts to award back  
2 wages under the FLSA to non-testifying employees based upon the fairly representative  
3 testimony of other employees . . . . The burden is not on the employees to prove the  
4 precise extent of uncompensated work.” *Ho Fat Seto*, 850 F.2d at 589. Courts have  
5 allowed all employees to recover backwages on the representative testimony of 18  
6 percent, 11 percent, or even 3.5 percent of employees. *Id.* at 589-90; *McLaughlin v.*  
7 *DialAmerica Marketing*, 716 F. Supp. 812, 824 (D. N.J. 1989); *Mt. Clemens Pottery*, 328  
8 U.S. at 684.

9  
10      The Secretary has established that Defendants’ records are inaccurate and has  
11 presented ample evidence of the amount of uncompensated work employees performed.  
12 Nine former Best Miracle employees testified that the timecards and payroll records were  
13 inaccurate and did not reflect all the hours they worked. These employees testified that  
14 their Monday through Friday schedule was 6:00 a.m. to 6:00 p.m. They also testified that  
15 they worked on most Saturdays, from 6:00 a.m. to 2:00 p.m. on average, and on some  
16 Sunday mornings.<sup>41</sup> The Secretary’s employee witnesses testified that they saw other  
17 Best Miracle employees working similar overtime hours.<sup>42</sup> For example, David Resendiz  
18 testified that his wife worked at Best Miracle and carpooled to and from work with him.<sup>43</sup>  
19 Pablo Alvarez testified that his sister, Claudia Alvarez, worked the same hours that he  
20 worked at Best Miracle.<sup>44</sup>

21  
22      The Best Miracle timecards and payroll records do not reflect the hours that the  
23 employees testified they worked.<sup>45</sup> All of the employees testified that they used

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<sup>41</sup> See *supra* note 8.

<sup>42</sup> Baez, 2/16/10, 80:18-83:10; Resendiz, 2/16/10, 152:13-153:9; Juarez Benitez, 2/17/10, 76:10-14.  
Alvarez, 2/17/10, 124:18-125:15; Montoya, 2/18/10, 73:5-15; Fuentes, 2/18/10, 82:3-16.

<sup>43</sup> Resendiz, 2/16/10, 150:14-23.

<sup>44</sup> Alvarez, 2/17/10, 124:12-17.

<sup>45</sup> Exs. 2, 6, 17, 20, 24, 26, 35, 36, 37.

1 timecards, regardless of whether they were paid by the hour or by the piece.<sup>46</sup> Some  
2 employees testified that they were instructed not to punch over 40 hours per week on  
3 their timecards.<sup>47</sup> Other employees testified that they kept two sets of timecards: a “real”  
4 timecard showing all of their hours and a “fake” timecard showing only 40 hours per  
5 week.<sup>48</sup> Many witnesses testified that they saw Mr. Nguyen using a second timeclock in  
6 his office to falsify timecards.<sup>49</sup> The Secretary’s witnesses testified that they were paid  
7 by check for the hours on their false timecards, which generally showed less than 40  
8 hours per week, and that they were paid in cash at a straight rate for any additional  
9 hours.<sup>50</sup> Sometimes they received cash for entire weeks.<sup>51</sup> The employees’ paystubs do  
10 not reflect the cash pay, nor do Defendants’ payroll records.<sup>52</sup> Additionally, some  
11 employees are missing from the payroll records for days, or even weeks, at a time, even  
12 though they appear on the timecards for those weeks and claim that they worked during  
13 that time.<sup>53</sup> Four Best Miracle employees, Kim Anh, Rosalia Linares, Alvaro Munoz,  
14 and Heidi Orosio, do not appear on payroll records or W-2s at all,<sup>54</sup> even though the  
15 Secretary’s witnesses identified them as employees.<sup>55</sup>

16  
17 The Secretary’s undercover surveillance corroborates the employees’ testimony.  
18 Mr. Leung testified that he conducted surveillance for seven days in July 2007, including  
19 five weekdays and two Saturdays. During the weekdays, the shop was already open with  
20

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21 <sup>46</sup> See *supra* notes 9 and 10.

22 <sup>47</sup> See *supra* note 11.

23 <sup>48</sup> See *supra* notes 12-14.

24 <sup>49</sup> See *supra* note 19.

25 <sup>50</sup> See *supra* note 15.

26 <sup>51</sup> Resendiz, 2/16/10, 149:1-3; Baez, 2/16/10, 64:15-67:10; Montoya, 2/18/10, 26:5-9; Rangel, 2/18/10,  
78:25-79:3.

27 <sup>52</sup> See *supra* note 15; Leung, 2/23/10, 59:23-24, 62:16-21, 64:5-65:1.

28 <sup>53</sup> Rangel, 2/18/10, 78:22-79:10; Ex. 35-4, 172, 173; Le, 2/25/10, 38:3-22.

<sup>54</sup> Leung, 2/19/10 (Vol. I), 88:4-89:21, 95:19-96:10; 2/19/10 (Vol. II), 4:11-5:9; Exs. 98, 99, 100, 112,  
113, 114.

<sup>55</sup> Identifying Anh: Baez, 2/16/10, 83:11-25. Identifying Linares: Baez, 2/16/10, 84:1-4; Resendiz,  
2/16/10, 151:19-22; Montoya, 2/18/10, 17:8-16. Identifying Orosio: Resendiz, 2/16/10, 151:23-152:3.  
Identifying Munoz: Resendiz, 2/16/10: 151:9-14; Montoya, 2/18/10, 17:20-24.

1 many cars in the parking lot and 30 to 40 employees working when he arrived between  
2 6:00 a.m. and 7:00 a.m. Most vehicles parked at the shop in the morning were still  
3 present at 5:00 p.m., 6:00 p.m., or even later. Mr. Leung also observed many employees  
4 arriving at 6:00 a.m. and leaving at 6:00 p.m. by foot or by bicycle. Mr. Leung  
5 confirmed that the shop was open on Saturdays as well.<sup>56</sup>

6

7 After comparing Mr. Leung's investigation notes to car registration information  
8 from the Department of Motor Vehicles and the records provided by Defendants, the  
9 Secretary identified 58 instances over seven days where cars registered to employees  
10 were parked at the shop at times when the owners of the cars were not punched in on  
11 their timecards.<sup>57</sup> For example, on July 3, 2007, Leticia Damanson's car was at the shop  
12 at 6:10 a.m., but her timecard shows her as having punched in at 9:15 a.m. that day.<sup>58</sup> On  
13 July 17, 2007, Jesus Colin's car was parked at the shop at 5:45 p.m., but his timecard  
14 shows him as having punched out at 12:58 p.m. that day.<sup>59</sup> These 58 discrepancies  
15 include 17 instances in which an employee's car was parked at the shop when the  
16 employee did not have any timecard entries for that day and five instances in which the  
17 employee did not appear on that week's payroll at all. For example, Ms. Baez's car was  
18 at the shop from at least 7:00 a.m. to 5:45 p.m. or later on July 17, 2007, yet there is no  
19 timecard entry for her on that day.<sup>60</sup> Similarly, on July 3, 2007, Mr. Resendiz's car was  
20 parked at the shop at 6:10 a.m., but there is no timecard for him that day, nor is he on the  
21 payroll for that week.<sup>61</sup>

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23 The Secretary's on-site inspection also corroborates the testimony of the employee  
24 witnesses. On July 30, 2007, the Department of Labor inspectors observed 31 employees

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26<sup>56</sup> Ex. 122; Leung, 2/19/10 (Vol. I), 62:3-76:22.

27<sup>57</sup> Exs. 121-124; Leung, 2/19/10 (Vol. I), 80:19-24; Basulto, 2/16/10, 43:14-46:20.

28<sup>58</sup> Ex. 121-1, line 9; Basulto, 2/16/10, 43:14-46:20.

<sup>59</sup> Ex. 121-4, line 30; Basulto, 2/16/10, 43:14-46:20.

<sup>60</sup> Ex. 121-4, line 29; Basulto, 2/16/10, 43:14-46:20.

<sup>61</sup> Ex. 121-1, line 10; Basulto, 2/16/10, 43:14-46:20.

1 at their work stations, six employees in the lunch room, and 10 employees outside the  
2 shop.<sup>62</sup> Despite there being 47 employees at the shop, the inspectors found only 15  
3 punched-in timecards for that day.<sup>63</sup> Ms. Le did not explain where the remaining 32  
4 timecards were.<sup>64</sup> Tellingly, Defendants never produced the timecards for that  
5 workweek.<sup>65</sup> During the on-site inspection, the inspectors also identified Kim Anh,  
6 Rosalia Linares, Alvaro Munoz, and Heidi Orosio,<sup>66</sup> thus corroborating the employee  
7 witnesses' testimony that those four individuals were indeed employees of Best Miracle.  
8

9       The Secretary has met her burden of showing as a matter of just and reasonable  
10 inference that the Best Miracle employees, on average, worked from 6:00 a.m. to 6:00  
11 p.m. on weekdays, worked from 6:00 a.m. to 2:00 p.m. on most Saturdays, and  
12 occasionally worked on Sunday mornings. Nine out of 47 employees, or 19 percent of  
13 employees, testified to this general schedule, which is greater than the percentage of  
14 employees that testified in *Ho Fat Seto*. The burden then shifts to Defendants "to come  
15 forward with evidence of the precise amount of work performed or with evidence to  
16 negative the reasonableness of the inference to be drawn from the [Secretary's]  
17 evidence." *Mt. Clemens Pottery*, 328 U.S. at 687. Defendants failed to do so.

18       Defendants argued at trial that their records are accurate and that they paid Best  
19 Miracle employees all of their overtime. They accused the Secretary's employee  
20 witnesses of lying and attempted to show that Mr. Leung had improperly investigated the  
21 case without first receiving authorization from the Department of Labor. They also  
22 accused Mr. Leung of extortion for requesting that Best Miracle pay the backwages.  
23 Defendants' story was not believable or supported by any credible evidence.  
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26       <sup>62</sup> Pham, 2/16/10, 18:20-19:18; Leung, 2/19/10 (Vol. I), 85:9-21; Ex. 125-1.  
27       <sup>63</sup> Pham, 2/16/10, 22:5-22; Leung, 2/19/10 (Vol. I), 86:17-25; Ex. 125-2.  
28       <sup>64</sup> Pham, 2/16/10, 26:21-27:12.  
      <sup>65</sup> Leung, 2/19/10 (Vol. II), 5:11-6:13.  
      <sup>66</sup> Ex. 125-1.

1 Defendants presented seven former employees who testified that they did not work  
2 unpaid overtime. Two of these employees, Lilia Avila and Antonia Gonzalez Mendoza,  
3 are not included in the group of 47 employees for whom the Secretary seeks backwages.<sup>67</sup>  
4 Ms. Avila and Ms. Gonzalez Mendoza testified that although they did not work overtime,  
5 they did not know the schedules of other employees.<sup>68</sup> Furthermore, their testimony  
6 conflicted with Defendants' payroll records. Ms. Avila testified that the longest time she  
7 took off from work was one week and that she never took off two or three weeks at a  
8 time.<sup>69</sup> She does not appear on Defendants' payroll for 18 weeks in 2006 and 2007,  
9 however, including twice for two weeks at a time and twice for three weeks at a time.<sup>70</sup>  
10 Ms. Gonzalez Mendoza testified that she worked every week other than a six-month  
11 vacation in 2006 and one other week-long vacation.<sup>71</sup> Ms. Gonzalez Mendoza is missing  
12 from the payroll register for 14 weeks beyond the six-month vacation in 2006.<sup>72</sup>

13  
14 Two other employees that testified that they did not work overtime, Maria Carmen  
15 Diaz and Maria Rodriguez, are friends and business associates with Ms. Le and recently  
16 went to dinner with her.<sup>73</sup> Ms. Diaz and Ms. Rodriguez's testimony also conflicts with  
17 Defendants' records. Ms. Rodriguez testified that she did not take any entire workweeks  
18 off during her five- to six-month employment with Best Miracle and that she worked at  
19 least one day in every week.<sup>74</sup> She does not appear on the payroll for three whole weeks,  
20 however.<sup>75</sup> Similarly, Ms. Diaz testified that she did not take any weeks off during the  
21 six to seven months she worked at Best Miracle, but she is missing from the payroll for

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<sup>67</sup> Ex. 107.

<sup>68</sup> Avila, 2/24/10, 38:2-9; Gonzalez Mendoza, 2/24/10, 55:25-56:5.

<sup>69</sup> Avila, 2/24/10, 45:12-20.

<sup>70</sup> Exs. 99, 100.

<sup>71</sup> Gonzalez Mendoza, 2/24/20, 63:18-64:8.

<sup>72</sup> Exs. 98-100.

<sup>73</sup> Diaz, 2/23/10, 160:3-162:7.

<sup>74</sup> Rodriguez, 2/23/20, 147:11-22.

<sup>75</sup> Exs. 88-2, 88-3.

1 five weeks.<sup>76</sup> This inconsistency between the witnesses' testimony and the other  
2 evidence in this case casts serious doubt on their credibility or knowledge of true facts.  
3

4 Defendants' last three employee witnesses, Orlando Sanchez, Son Dau, and Jaime  
5 De La Rosa, were unofficial supervisors who trained the other employees about the  
6 timekeeping system or distributed work.<sup>77</sup> Mr. Sanchez testified that he typically worked  
7 from 7:00 a.m. to 3:30 p.m. or 4:30 p.m.<sup>78</sup> There were a number of problems with Mr.  
8 Sanchez's testimony. On cross examination, Mr. Sanchez first stated that he was not sure  
9 if he had worked for a shop called Double T before Best Miracle and that he did not  
10 know if Ms. Le was affiliated with any of his prior employers.<sup>79</sup> Upon further  
11 questioning, Mr. Sanchez admitted that he had worked for Double T and that Ms. Le  
12 would distribute work at Double T.<sup>80</sup> Although Mr. Sanchez denied having supervisory  
13 duties at Best Miracle, the Secretary's employee witnesses, as well as Defendants' own  
14 witnesses, testified that Mr. Sanchez acted as a supervisor at Best Miracle.<sup>81</sup> Mr. Sanchez  
15 also met with Ms. Le for dinner a few months before trial and inquired about whether she  
16 would have any work for him in the future. Mr. Sanchez admitted that he is unemployed  
17 and is seeking work from Ms. Le.<sup>82</sup>

18  
19 Mr. Dau testified that he worked from around 8:00 a.m. or 9:00 a.m. to 3:00 p.m.  
20 or 4:00 p.m.<sup>83</sup> Mr. Dau's car, however, was often parked outside of the Best Miracle  
21 shop at times when he was not punched in on his timecard. On July 9, 2007, Mr. Dau's  
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23 <sup>76</sup> Diaz, 2/23/10, 157:12-20; Exs. 63-2, 63-3.

24 <sup>77</sup> Baez, 2/16/10, 77:20-78:3; Alvarez, 2/17/10, 120:23-121:18; Montoya, 2/18/10, 41:1-18; 72:3-17;  
Gonzalez Mendoza, 2/24/10, 58:12-17.

25 <sup>78</sup> Sanchez, 2/23/10, 165:11-24.

26 <sup>79</sup> Sanchez, 2/23/10, 169:11-22.

27 <sup>80</sup> Sanchez, 2/23/10, 170:12-25.

28 <sup>81</sup> Alvarez, 2/17/10, 120:23-121:18, 133:12-14, 136:15-16, 142:2-21, 144:1-6, 146:3-9; Gonzalez  
Mendoza, 2/24/10, 57:12-17.

<sup>82</sup> Sanchez, 2/23/10, 177:1-7.

<sup>83</sup> Dau, 2/25/10, 52:2-7.

1 car was at the shop at 6:00 a.m., but he had not punched in until 9:10 a.m. On July, 25,  
2 2007, Mr. Dau's car was at the shop when Mr. Leung arrived at 9:00 a.m. and stayed  
3 there until 6:00 p.m., but there is no timecard for him that day, nor is he on payroll for  
4 that day.<sup>84</sup> Mr. Dau testified that on rare occasions he left his car at the shop when it  
5 broke down.<sup>85</sup> This seems an unlikely explanation for the surveillance discrepancies  
6 given that Mr. Leung observed Mr. Dau's car at the shop when Mr. Dau was not punched  
7 in on two out of seven days he performed surveillance. It also fails to explain why Mr.  
8 Leung saw Mr. Dau's car leaving the shop at 6:00 p.m. with all the other employees' cars  
9 on a day when Mr. Dau was not punched in or on payroll.

10  
11 And Mr. De La Rosa's testimony was the most unbelievable. Mr. De La Rosa  
12 testified that the shop opened at 7:00 a.m. and closed at 3:30 p.m. on weekdays.<sup>86</sup> His  
13 testimony contradicts his own timecards, which he insisted are accurate.<sup>87</sup> It also  
14 conflicts with Defendants' admission that the shop was open from 6:00 a.m. to 6:00 p.m.  
15 on weekdays.<sup>88</sup> Furthermore, Mr. Leung's surveillance showed that Mr. De La Rosa  
16 worked from 6:00 a.m. to 6:00 p.m. on weekdays. Mr. De La Rosa's car was at the shop  
17 at 6:10 a.m. on July 3, 2007, but his timecard shows that he punched in at 9:30 a.m.<sup>89</sup> On  
18 July 5 and July 17, 2007, Mr. De La Rosa's car was at the shop, but he did not punch in  
19 at all on those days.<sup>90</sup> On July 25, 2007, Mr. De La Rosa's vehicle left at 6:00 p.m., but  
20 his timecard shows that he punched out at 2:01 p.m.<sup>91</sup> Mr. De La Rosa also testified that  
21 he would never take off whole weeks from work,<sup>92</sup> but he is missing from the payroll for

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<sup>84</sup> Ex. 121; Basulto, 2/16/10, 43:14-46:20.

<sup>85</sup> Dau, 2/25/10, 52:8-53:7.

<sup>86</sup> De La Rosa, 2/24/10, 11:24-12:19.

<sup>87</sup> De La Rosa, 2/24/10, 9:15-16; Ex. 13.

<sup>88</sup> Le, 2/24/10, 89:3-19; Ex. 175. No. 11.

<sup>89</sup> Ex. 121-1, line 2; Basulto, 2/16/10, 43:14-46:20.

<sup>90</sup> Ex. 121-2, line 14; Ex. 121-4, line 32; Basulto, 2/16/10, 43:14-46:20.

<sup>91</sup> Ex. 121-4, line 37; Basulto, 2/16/10, 43:14-46:20.

<sup>92</sup> De La Rosa, 2/24/10, 25:14-26:18.

1 eight entire weeks.<sup>93</sup> Additionally, Mr. De La Rosa claimed that he did not remember  
2 Ms. Le's name when asked who his manager was at Double T even though Ms. Le had  
3 been his boss at Best Miracle for years. He claimed to remember that she was his  
4 supervisor at Double T only upon further questioning.<sup>94</sup> Most egregiously, Mr. De La  
5 Rosa testified that he had never met with Defendants' attorneys, who were sitting in the  
6 courtroom at the defense counsel table during his testimony. When asked if he had met  
7 Defendants' attorneys on direct examination, Mr. De La Rosa said no.<sup>95</sup> When asked  
8 again on cross examination, Mr. De La Rosa looked over at Defendants' counsel and  
9 again stated that he had not met with any of them.<sup>96</sup> He only "remembered" meeting  
10 them after being confronted with a transcript of his deposition taken at their office a few  
11 months earlier.<sup>97</sup> Tellingly, Mr. De La Rosa testified that he is angry at the Department  
12 of Labor and the employee who reported Best Miracle because they are responsible for  
13 the shop closing and putting him out of work.<sup>98</sup>

14

15 Ms. Le's testimony was similarly full of inconsistent, misleading, and false  
16 statements. Ms. Le testified that although the shop was open from 6:00 a.m. to 6:00 p.m.,  
17 Monday through Friday, and from 6:00 a.m. to 12:00 p.m. or later on Saturdays, the  
18 employees worked in shifts.<sup>99</sup> She seemed intent on obscuring her history of owning and  
19 operating garment shops. Ms. Le testified that she worked as a production manager for a  
20 company called CMD Management, which she claimed was a garment manufacturer.<sup>100</sup>  
21 She denied hiring CMD as a payroll servicer for her garment shops.<sup>101</sup> In contrast,  
22 CMD's Chief Executive Officer testified that CMD is a payroll processing and workers'

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24 <sup>93</sup> Ex. 61.

25 <sup>94</sup> De La Rosa, 2/24/10, 24:5-22.

26 <sup>95</sup> De La Rosa, 2/24/10, 16:14-15.

27 <sup>96</sup> De La Rosa, 2/24/10, 26:19-27:5.

28 <sup>97</sup> De La Rosa, 2/24/10, 26:19-29:20, 34:7-35:3.

<sup>98</sup> De La Rosa, 2/24/10, 31:20-32:25.

<sup>99</sup> Le, 2/24/10, 89:3-92:14.

<sup>100</sup> Le, 2/24/10, 67:18-69:1.

<sup>101</sup> Le, 2/25/10, 11:3-8.

1 compensation insurance service provider. He said Ms. Le and Mr. Nguyen were CMD's  
2 customers from 2000 to 2005 and were never CMD employees.<sup>102</sup> He also testified that  
3 he knew Ms. Le and Mr. Nguyen owned garment shops because he delivered the payroll  
4 to their shops and received checks from them to cover payroll, workers' compensation  
5 insurance, employers' taxes, and CMD's fee.<sup>103</sup>

6

7 Ms. Le also testified inconsistently about her experience with Double T and  
8 another garment shop called G Services. During her deposition, Ms. Le denied any  
9 involvement whatsoever with Double T, saying that she knew nothing about Double T,  
10 was never paid by Double T, and never gave any advice to her sister about operating  
11 Double T.<sup>104</sup> At trial, however, Ms. Le testified that she worked for Double T and that  
12 she trained her sister about production, dealing with employees, and interacting with  
13 customers.<sup>105</sup> Similarly, Ms. Le stated in her deposition that she could not recall whether  
14 she had ever heard the name "G Services" or if she was ever affiliated at any time with G  
15 Services.<sup>106</sup> At trial, Ms. Le admitted that G Services was a garment company that she  
16 owned and operated.<sup>107</sup>

17

18 Mr. Nguyen was also not a credible witness. He testified that he was a trimmer at  
19 CMD and that he did not know that CMD was a payroll service company. He denied that  
20 Defendants hired CMD to provide payroll services for the various shops they operated.<sup>108</sup>  
21 As discussed above, this testimony flatly contradicted the testimony of CMD's CEO, who

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23 <sup>102</sup> Shen, 2/25/10, 70:10-73:9.

24 <sup>103</sup> Shen, 2/25/10, 77:3-10.

25 <sup>104</sup> Le, 2/25/10, 26:1- 30:19. In an apparent attempt to prevent the Department of Labor from obtaining  
26 the payroll records of Double T, Defendants, with Ms. Le's knowledge, filed a motion to quash the  
subpoena served on Double T's accountant and attached Ms. Le's deposition testimony. Le, 2/25/10,  
31:18-34:17.

27 <sup>105</sup> Le, 2/24/10, 73:16-75:11.

28 <sup>106</sup> Le, 2/24/10, 30:24-31:6.

<sup>107</sup> Le, 2/24/10, 70:23-71:14.

<sup>108</sup> Nguyen, 2/25/10, 66:17-67:3.

1 stated that CMD was a payroll processing company hired by Defendants. Mr. Nguyen  
2 also testified in his deposition that he merely knew of G Services but did not remember  
3 any information about the company. At trial he admitted that he was its CEO and  
4 President when confronted with a state stock certificate.<sup>109</sup>

5  
6 Defendants also argue that Mr. Leung's surveillance fails to support the  
7 Secretary's version of events. They implied at trial that Mr. Leung is corrupt because he  
8 conducted his surveillance before the Department of Labor computer files show that he  
9 was "assigned" the Best Miracle case on July 18, 2007. As Mr. Leung explained,  
10 however, a case file is only "assigned" on the computer after initial surveillance shows  
11 that the Department of Labor should initiate a formal investigation.<sup>110</sup> Indeed, Mr.  
12 Leung's supervisor at the Department of Labor testified that he instructed Mr. Leung to  
13 conduct surveillance on Best Miracle before July 18, 2007.<sup>111</sup> Defendants also argue that  
14 Mr. Leung's surveillance of the parking lot fails to show that Best Miracle employees  
15 were working overtime because Mr. Leung observed people arriving after 6:00 a.m. and  
16 leaving before 6:00 p.m. While not all cars and pedestrians arrived exactly at 6:00 a.m.  
17 and left exactly at 6:00 p.m., the vast majority of employees arrived and left within a half  
18 hour of those times.<sup>112</sup> Furthermore, Defendants argue that there are a number of reasons  
19 why employees' cars might be at the shop while they are not working, for example,  
20 because they are eating breakfast, waiting for work, or working for another company.  
21 Defendants, however, failed to present sufficient evidence of these reasons to explain the  
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24<sup>109</sup> Nguyen, 2/25/10, 63:4-65:10.  
25

<sup>110</sup> Leung, 2/19/10 (Vol. I), 88:8-97:13.  
26

<sup>111</sup> Huerta, 2/23/10, 87:16-89:16.  
27

<sup>112</sup> Ex. 122; Leung, 2/23/10, 33:24-43:4. Defendants also argue that Mr. Leung cannot establish the  
28 work hours of any employees because he did not identify all of the vehicles in the area and could not  
personally identify any employees. This argument is nonsense. Of course the surveillance does not, by  
itself, establish that each and every one of Defendants' employees worked over 60 hours per week. Mr.  
Leung's surveillance, in combination with the DMV records of the employees and Defendants' records,  
provides compelling evidence that Defendants' records were inaccurate and that Best Miracle employees  
generally worked from 6:00 a.m. to 6:00 p.m. on weekdays.

1 many timecard discrepancies the Secretary identified in the surveillance report.<sup>113</sup> The  
2 Secretary's employee witnesses testified that they did not park their cars at the Best  
3 Miracle shop when they were not working,<sup>114</sup> and common sense supports that  
4 conclusion.

5  
6 In sum, the testimony of Defendants' witnesses was a web of implausible and  
7 internally inconsistent lies. Some witnesses testified that the shop closed at 3:30 p.m.  
8 every day, while other witnesses testified that the shop was open until 6:00 p.m. but the  
9 employees worked in shifts. Employees who acted as supervisors tried to conceal that  
10 role. Employees who had worked for Ms. Le for years testified that they could not  
11 remember that she had supervised them at Double T. One employee even said he had  
12 never met with Defendants' attorneys despite having his deposition taken by them at their  
13 office a few months prior. Ms. Le and Mr. Nguyen gave testimony about their roles at  
14 Double T and G Services that contradicted their deposition testimony.

15  
16 Most of Defendants' employee witnesses had an obvious motive to alter their  
17 testimony to support Defendants. Some of the witnesses were friends with Ms. Le.  
18 Others were supervisors at Best Miracle. One witness was openly angry about the shop  
19 closing. Significantly, some witnesses were hoping to work for Ms. Le in the future. The  
20 only two witnesses without apparent biases, Ms. Avila and Ms. Gonzalez Mendoza,  
21 seemed to know very little about Best Miracle's operations and are not part of the group  
22 of 47 employees for whom the Secretary seeks backwages.

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26 <sup>113</sup> In any case, the two witnesses who testified that, on rare occasions, they waited for work at Best  
27 Miracle or worked for Moa Moa while leaving their cars at Best Miracle stated that they carried out  
those actions at Defendants' request. Baez, 2/16/10, 69:6-7; Matias, 2/17/10, 45:20-51:25.

28 <sup>114</sup> Baez, 2/16/10, 68:25-69:17; Resendiz, 2/16/10, 176:12-14; Rios, 2/17/10, 81:23-82:5; Fuentes,  
2/18/10, 87:17-22.

1 To be sure, the Secretary's witnesses had a monetary incentive to testify that they  
2 worked unpaid overtime. By testifying on behalf of the Secretary, however, these  
3 employees likely shut themselves out of future employment with Ms. Le and Mr.  
4 Nguyen. Testifying was also risky for these employees, many of whom may be  
5 undocumented immigrants and may have tax liability based on the cash wages they  
6 received. Most of all, the testimony of the Secretary's witnesses was credible because it  
7 was consistent and logical. Defendants argue that the Secretary's witnesses testified  
8 inconsistently about the ways in which they were paid and the ways in which Defendants  
9 falsified timecards. In fact, all of the Secretary's employee witnesses testified that  
10 Defendants paid them by check for 40 hours per week and in cash at a straight rate for  
11 overtime hours. While Defendants used various methods to falsify timecards, each  
12 method produced timecards showing no more than 40 hours per week. Thus, the more  
13 logical explanation based on the evidence is that Defendants, relying on their past  
14 experience with the Department of Labor, devised a number of ways to falsify timecards  
15 in order to evade enforcement. There is simply insufficient evidence to suggest that the  
16 Secretary's employee witnesses and the Department of Labor conspired to wage a  
17 widespread defamatory campaign against Best Miracle. Defendants have failed to rebut  
18 the Secretary's prima facie case that Defendants kept inaccurate records and did not pay  
19 their employees overtime. The Court therefore finds that Defendants violated Section 7  
20 of the FLSA.<sup>115</sup>

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25<sup>115</sup> The Secretary argues that there is a minimum wage violation only if the Court accepts Defendants'  
26 argument that they never paid employees in cash. Defendants testified that they did not make any cash  
27 payments to employees, but the Secretary's employee witnesses consistently testified that they were paid  
in cash at a straight rate for overtime hours. For the reasons stated above, the Court finds the Secretary's  
employee witnesses credible. Additionally, the employees would have little incentive to lie about cash  
pay because it would only reduce the amount of backwages they would receive. Based on the evidence  
in this case, Defendants paid Best Miracle employees at least minimum wage for all hours worked, so  
there is no violation of the minimum wage provisions of the FLSA.

## C. Hot Goods

The hot goods provision of Section 15 of the FLSA states that it is unlawful for any person “to transport, offer for transportation, ship, deliver, or sell in commerce, or to ship, deliver, or sell with knowledge that shipment or delivery or sale thereof in commerce is intended, any goods in the production of which any employee was employed in violation of [the minimum wage or overtime provisions of the FLSA].” 29 U.S.C. § 215(a)(1). The hot goods provision of the FLSA “reflects Congress’ desire to eliminate the competitive advantage enjoyed by goods produced under substandard conditions.” *Citicorp Indus. Credit, Inc. v. Brock*, 483 U.S. 27, 36 (1987). The Supreme Court has held that “exclusion from interstate commerce of goods produced under substandard conditions is not simply a means to enforce other statutory goals; it is itself a central purpose of the FLSA.” *Id.* at 36 n.8

The parties have stipulated that Best Miracle produced goods for Moa Moa and Byer California during the entire time it operated.<sup>116</sup> Moa Moa and Byer California shipped these goods in interstate commerce.<sup>117</sup> Defendants argue that they did not violate the hot goods provisions of the FLSA because the goods were not “hot.” As described above, the Court finds that the garments produced by Best Miracle during the entirety of its existence were produced in violation of the FLSA because Defendants did not pay their employees overtime. Defendants therefore violated Section 15 of the FLSA by selling hot goods to Moa Moa and Byer California, knowing that they would be sold in interstate commerce.

<sup>116</sup> Ex. 175, Nos. 13, 14.

<sup>117</sup> Chung, 2/19/10 (Vol. I), 37:21-24.

## **D. Willful Violations**

Although the statute of limitations is normally two years for cases brought under the FLSA, a three-year statute of limitations applies to employers whose violations are willful. 29 U.S.C. § 255(a). A violation is considered “willful” if the employer knew or showed reckless disregard as to whether its conduct violated the Act. *McLaughlin v. Richland Shoe*, 486 U.S. 128, 133 (1988).

Defendants' violations were willful. Defendants have admitted knowledge of the FLSA recordkeeping and overtime requirements, and Ms. Le admitted that she had violated the FLSA while working at Double T.<sup>118</sup> It is also clear that Defendants' actions were willful because they engaged in a deliberate campaign to falsify records at Best Miracle that included instructing employees to punch in for fewer hours than they actually worked and preparing fraudulent timecards.<sup>119</sup> They even told their employees on multiple occasions that the fraudulent timecards were designed to mislead the Department of Labor.<sup>120</sup> The Secretary has shown that Defendants acted willfully, so a three-year statute of limitations applies. Defendants are liable for violations they committed within three years of the Secretary's filing of the complaint on September 5, 2008. This period includes all but four of the paydays during Best Miracle's existence.<sup>121</sup>

## E. Injunctive Relief

The Secretary seeks a permanent injunction prohibiting Defendants from further violating the FLSA’s recordkeeping, overtime, and hot goods provisions. Although Best Miracle is not currently operating, the Secretary has shown that an injunction is necessary

<sup>118</sup> Ex. 175, Nos. 15, 16; Le, 2/24/10, 83:24-85:7; Ex. 158; Leung, 2/19/10 (Vol. II), 28:17-34:3.

<sup>119</sup> See *supra* notes 9-20, 45.

<sup>120</sup> See *supra* note 21.

<sup>121</sup> See *supr.*

1 to shift the burden of enforcement should Defendants re-open Best Miracle.  
2 Furthermore, an injunction against Ms. Le and Mr. Nguyen is necessary given their long  
3 history of opening various garment shops under different names.

4

5 The Secretary also seeks an injunction to prohibit Defendants from continuing to  
6 withhold unpaid overtime compensation. Although the exact amount of backwages being  
7 withheld is impossible to determine, Defendants may not complain that the computations  
8 "lack the exactness and precision of measurement that would be possible had [they] kept  
9 records in accordance with the requirements of § 11(c) of the Act." *Mt. Clemens Pottery*,  
10 328 U.S. at 687-88. The Secretary estimates that Best Miracle employees worked 60  
11 hours per week on average and that Defendants owe 47 employees backwages for unpaid  
12 overtime in the total amount of \$172,832.50.<sup>122</sup> The Secretary calculated this amount by  
13 multiplying the weeks each employee worked by 20 overtime hours per week to estimate  
14 the total amount of overtime hours worked by each employee at Best Miracle. To  
15 account for holidays, slow periods, and other absences, the Secretary reduced the number  
16 of workweeks by 15 percent for employees who worked more than a year and by 50  
17 percent for employees for whom the Department of Labor did not have accurate  
18 information. The Secretary then multiplied the total overtime hours by one-half the  
19 hourly wage of the employee.<sup>123</sup> The Court finds her estimate credible and reliable.<sup>124</sup> If  
20

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21 <sup>122</sup> Ex. 107.

22 <sup>123</sup> Huerta, 2/23/10, 93:22-94:24, 97:8-98:3.

23 <sup>124</sup> Based on the testimony of the witnesses, the Secretary credited the employees with a \$200 weekly  
24 cash payment, for a total weekly pay of \$450, or \$7.50 an hour. Defendants argue that the Secretary's  
25 calculations are inaccurate because she inadvertently failed to apply the \$200 cash credit to some  
26 employees. Out of 47 employees, the Secretary listed eight as earning \$400 or less a week and three as  
27 earning \$500 a week. An employee earning \$400 for 60 hours per week would be making \$6.67 per  
hour—less than the California minimum wage during 2005-2007. The Secretary therefore used the  
California minimum wage—\$6.75 before 2007 and \$7.50 an hour starting in 2007—to calculate the  
hourly wage for those employees. Because this rate was equal to or less than the \$7.50 an hour credited  
to all other employees, the error actually favors Defendants. The Secretary also used a weekly pay of  
\$500 for Juan Montoya, Jorge Luis Rios, and Manuel Matias. This was not part of the cash payment  
error, as these three witnesses testified that they received more than \$450 a week on average. *See supra*  
note 15.

1 anything, the estimate is conservative because the employees likely worked more than 60  
2 hours per week and because the Secretary applied generous reductions in the estimated  
3 number of workweeks.

4

5 The Secretary also requests prejudgment interest. “[I]t is ordinarily an abuse of  
6 discretion not to include pre-judgment interest in back-pay awards under the FLSA.”  
7 *Ford v. Alfaro*, 785 F.2d 835, 842 (9th Cir. 1986). The default prejudgment interest rate  
8 is calculated pursuant to 28 U.S.C. § 1961, “unless the trial judge finds, on substantial  
9 evidence, that the equities of the particular case require a different rate.” *Western Pacific*  
10 *Fisheries, Inc. v. SS President Grant*, 730 F.2d 1280, 1288 (9th Cir. 1984). The  
11 Secretary has not presented evidence that the equities of this case require a different rate,  
12 so the Secretary shall recover prejudgment interest in the amount specified by 28 U.S.C.  
13 § 1961, starting from the last payday of August 17, 2007.

14

15 **IV. CONCLUSION**

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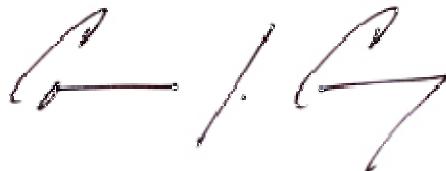
17 For the foregoing reasons, the Court finds that Defendants violated the  
18 recordkeeping, overtime, and hot goods provisions of the FLSA. The Secretary is  
19 directed to file a proposed permanent injunction and a proposed judgment consistent with  
20 this Order by May 17, 2010.

21

22 DATED: May 3, 2010

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24



25 CORMAC J. CARNEY

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